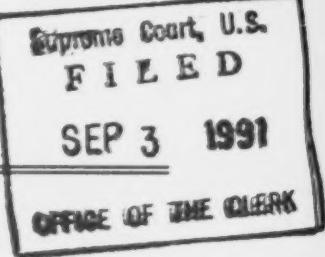


(2)
No. 91-193



In The
Supreme Court of the United States
October Term, 1991

◆◆◆◆◆
BETTY KELLY,

Petitioner,
vs.

HOLIDAY INN OF BLYTHEVILLE,

Respondent.

◆◆◆◆◆
**Petition For Writ Of Certiorari To The
Arkansas Supreme Court**

◆◆◆◆◆
RESPONDENT'S BRIEF IN OPPOSITION

◆◆◆◆◆
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QUESTION PRESENTED

Should this court review a decision of the Arkansas Court of Appeals and Arkansas Supreme Court involving the interpretation of an Arkansas statute governing the appeals process and standard of review in Arkansas Workers' Compensation claims.

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STATEMENT OF THE CASE

Betty Kelly, petitioner, brought a workers' compensation claim against respondent Holiday Inn of Blytheville for injuries she claimed to have sustained on the job. She had a full hearing before an Administrative Law Judge, and the Judge held that she was entitled to additional benefits.

Respondents appealed this decision to the Full Commission, a panel of three (3) judges, who reviewed the decision *de novo* and reversed the Administrative Law Judge's ruling holding that the preponderance of the evidence established that she was not entitled to further benefits.

Petitioner subsequently appealed to the Arkansas Court of Appeals, which affirmed the Commission. Petitions for Rehearing to the Arkansas Court of Appeals and for review to the Arkansas Supreme Court were denied.

The standard of review for Arkansas Workers' Compensation cases on appeal to the Arkansas Court of Appeals is governed by Ark. Code Ann. § 11-9-711(b) (4), which contains four (4) grounds for reversal. One of those grounds is that the Order or award was not supported by substantial evidence of record.

It is this statute and standard of review that petitioner contends should be reviewed by the United States Supreme Court.

ARGUMENT REASONS FOR DENYING THE WRIT

Petitioner has stated no grounds for this court to issue a Writ of Certiorari pursuant to Rule 10 of the Rules of the Supreme Court. It is clear from a review of Rule 10 that there could be no basis.

There is no constitutional issue or other federal question decided in the proceedings below. Certainly there has not been a decision involving a federal question which conflicts with the decisions of other state courts or of a United States Court of Appeals. The decision does not involve an important question of federal law which should be settled by this court, nor has it decided a federal question in a way that conflicts with applicable decisions of this Court. There was no departure from the usual course of judicial proceedings by the state judicial bodies and appellate courts which decided this case. Finally, there are no special or important reasons for this court to review the case.

This case simply involves the standard of review which the Court of Appeals and Supreme Court use in deciding appeals from the Arkansas Workers' Compensation Commission. The same standard applies to all claimants and all employers. This is strictly a matter of state law, and does not involve any federal or constitutional issues.

The only mention of the United States Constitution in petitioner's brief is a one paragraph reference to the equal protection guarantees of the Fourteenth Amendment on page 17 of the petitioner's brief. This is apparently only a reference to the fact that the Workers'

Compensation Commission may at times be "liberal" and at other times "conservative", depending on the appointees to the Commission. Petitioner contends that the Commission should remain consistent so as to treat all equally. First, it is obviously not a violation of the Equal Protection Clause that some judges are more liberal or conservative than others. Obviously, federal judges are subject to the same variances. Secondly, petitioner does not identify a class of claimants who are treated differently than other claimants who need the protection of the Fourteenth Amendment. This Court stated in *Jones v. Helms*, 452 U.S. 412 (1981), that "the Equal Protection Clause provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others, and for contending that general rules are being applied in an arbitrary or discriminatory way." As in *Jones v. Helms*, there is nothing in petitioner's argument or in the record which suggests that this statute has been applied differently in this case than it would be in any other case. The statute does not subject "one caste of persons to a code not applicable to another." This Court stated in *Jones v. Helms* that the Equal Protection Clause requires that the state govern impartially. "General rules that apply even handedly to all persons within the jurisdiction unquestionably comply with this principal." *Id.*, quoting from *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587, 59 L. Ed. 2d 587, 99 S. Ct. 1355.

Thus, the only mention by petitioner of a constitutional or federal question is to a provision in the Constitution which has no application to this Petition.

Additionally, petitioner has not raised this issue in a manner which gives this court a basis to grant her Petition. In *Taylor v. Illinois*, 484 U.S. 400 (1988), this Court stated that a "generic reference to the Fourteenth Amendment is not sufficient to preserve a constitutional claim based on an unidentified provision of the Bill of Rights" This is all the petitioner has done in this case, and accordingly the Petition should be denied.

Finally, petitioner's argument concerns a state court's standard of review of a judgment on appeal. It is clearly the state court's right to establish its procedure and method of review as long as it does not distinguish between appellants on some unconstitutional basis. All appellants are treated the same, so there is no validity to such an argument. There is no other constitutional argument presented. Further, the right to appeal to the Arkansas court is not a constitutional right, as appellate review is purely a statutory right. Such review procedure is not a necessary part of a legal system, required by due process, nor is the right of appeal an inherent or inalienable right. *Ex Parte Abdu*, 247 U.S. 27 (1918). The appeal being a privilege given by the state, then it is for the state to determine its method of review unless the petitioner demonstrates to this court that a constitutional violation has occurred, which petitioner clearly has not done.

CONCLUSION

For all these reasons, the respondent urges that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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